COURT OF CRIMINAL APPEALS

Released; 1 March, 2002

MEMORANDUM

CR-00-2114 Jefferson Circuit Court CC00-448 and -447

Harry John Coughlin, Jr. And Bettye Lovette Coughlin v. State of Alabama

COBB, Judge

On June 4, 2001, in consolidated causes, the Coughlins were convicted of disorderly conduct, a violation of §13A-11-7(a) (2), Ala. Code 1975. The Trial court sentenced them to serve 90 days in jail and jined the Coughlins $500. This appeal followed.

In the summer of 1999, neighbors of the Coughlins filed complaints alledging that the Coughlins were playing extremely loud music 24 hours a day. Warrants for their arrests were issued. Mr. Coughlin was arrested while out shopping for groceries. His mother, Mrs. Coughlin, was arrested when she went to the county jail to pay Mr. Coughlin's bond.

The Coughlins present several arguements on appeal that were argued[1] to the trial court. The arguements are somewhat disjointed and consist mostly of conspiracy theories. We address each in turn.

I.

Arguements I, II, and IX appear to allege that the Coughlins were "ambushed," that is, arrested without a warrant. However, as the State points out, warrants for the Coughlins' arrest were issued on July 22, 1999. (C.R. 11-13, 154-155) Therefore, their claim is completely without merit.

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[1] The Record consist of five volumes, the majority of which consist of the Coughlins arguing with the trial court, either as counsel or as witnesses. A review of the record reveals that the mors of the arguements they presented on appeal were presented to the trial court at some point and in some form.

II.

In Arguements V,[2] VII, and IX, the Coughlins argue that the arresting officer did not possess a warrant when he arrested them. "An officer may arrest a person without a warrant, on any day and at any time...when the officer has actual knowledge that a warrant for the person's arrest for the mommission of a felony or misdemenor has been issued...."§15-10-3(a)(6), Ala. Code 1975. Officer James Green testified that, when he arrested Mr. Coughlin, he did not have a warrant, but he "had knowledge of the warrant," (R. 476), and he told Mr. Coughlin that he was "being arrested for disorderly conduct." (R. 478.) Officer Green also testified that, at the time he arrested Mr. Coughlin, he knew there was also a warrant out for Mrs. Coughlin's arrest, but he "got rather busy that afternoon and [was] unable to send a car to [Mrs. Coughlin's] house." (R.488.) Mrs. Coughlin was subsequently arrested when she went to the jail to pay her son's bond.

Therefore, although the arresting officer did not have possession of warrants for the Coughlins' arrest, he was aware that warrants had been issued for their arrest. The claim is without merit.

III.

In Arguements III, VI, and X, the Coughlins' apparently dispute the sufficiency of the evidence aginst them.[3]

> **"A person commits the cirme of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he....makes unreasonable noise."**

We review the trial court's denial of Coughlins' motion for judgement of aquittal to determine whether, at the time they made their motion, evidence existed at that time from which the

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[2] Arguement V is extremely vague. The Coughlins appear to be arguing that the laws of Alabama are arbitrarily enforced by law enforcement.

[3] The Coughlins made a 12-page arguement at the close of the State's case-in-chief. This arguement appears to encompass most of the same points the Coughlins attempt to make on appeal. No motion was made at the close of all of the evidence. We presume, without deciding, that the sufficiency arguements are preserved for appellate review.

jury could fairly infer the defendants' guilt; we view that evidence in a light most favorable to the State. Ex parte Burton, 783 So.2d 887, 890 (Ala. 2000)

The evidence, which was presented primarily in the form of a series of neighbors testifying, showed the the Coughlin played loud music 24 hours a day, 7 days a week, for approximately 6-8 weeks. This barrage continued despite the complaints of the neighbors. There was some testimony that, in respose to the complaints, the Coughlins intentionally turned their speakers to face a particular neighbor when that neighbor was out in his or her yard. This certainly is sufficient evidence that the Coughlins were guilty of disorderly conduct, and their arguements are without merit, See, e.g., Sterling v. State, 701 So.2d 71, 74 (Ala. Crim. App. 1997).

IV.

In Arguements IV, VIII, and XV, the Coughlins assert several claims that the trial judge was biased aginst them, helped fabricate this case aginst them, and intentionally prejudiced the jury.

If the Coughlins wished to alledge that the trial judge was involved in the alleged conspiracy aginst them, the proper avenue for asserting their claim of bias would have been a motion to recuse; upon denial by the trial judge, the Coughlins then should have petitioned for a writ of mandamus. See, e.g. Ex parte Bryant, 682 So. 2d 39 (Ala. 1996). The Coughlins did not present these claims in any fashion to the trial court. Therefore, these claims are not properly before this us.

V.

The Coughlins argue that the trial court erroneously provided the jurors with paper and pencels to take notes. The Coughlin did not object to this at trial; absent an objection and an adverse ruling by the trial court, this arguement has not been preserved for appellate review. Pace v. State, 714 So.2d 332, 334 (Ala. 1997). Moreover, whether jurors are allowed to take notes and use those notes in their deliberation is left to the discreation of the trial court. Therefore, this arguement is without merit. Poole v. State, 650 So.2d 541 (Ala. Crim. App. 1994). See also Smith v. State, 756 So.2d 892 (Ala. Crim. App. 1998).

VI.

In Arguements XI and XII, the Coughlins take issue with how the jury venire was chosen. Although the Coughlins filed several motions alledging underhandedness during the jury selection process, these particular arguements were not included. We cannot find anywhere in the record where the Coughlins presented these particular objections to the trial court; therfore, these arguements have not been preserved for appellate review. Pace, supra.

VII.

Finally, the Coughlins argu that they were denied adequate counsel. Specifically, they contend that a circuit judge and County Commisioner have conspired and that "The Bar[] is closed to [them] and [they] cannot obtain adequate counsel." (Appellant's brief, p.21.) This arguement apparently stems from Mrs. Coughlin's reciept of a letter from a ex-president of the Birmingham Bar Association, stating that he practiced medacal malpractice law and that she should contact the bar for a referal.

Initially, we point out that Mr. Coughlin did not object to his self-representation. Therfore, he has not preserved this claom for appellate review. Pace, supra.[4]

> **"If a nonindigent defendant appears without counsel at any proceeding after having been given a reasonable time to obtain counsel, the cause shall proceed."**

Rule 6.1 (b), Ala. R. Crim. P. See also Clemons v. State, [Ms. CR-99-1939 September 28, 2001] _____So.2d ____ n. 1 (Ala.Crim. App. 2001); Johnston v. City of Iorndale, 671 So.2d 777, 779 (Ala. Crim. App. 1995)

The record reflects that the Coughlins never appllied for, and therefore were never granted, indigent defence status. The record also reflects that, for nearly two years of litigation[5] in this case, the Coughlins contentedly filed an abundance of

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[4] In fact, Mr. Coughlin claims to have recieved a law degree from the Birmingham School of Law. Moreover, he identifies himself in his brief to this Court as "Harry J. Coughlin, LL.B." (Appellant's Brief, p. 26.)

[5] The Coughlins were arrested on July 22, 1999. The trial began June 4, 2001.

motions with the trial court and tirelessly managed their cases. The letter from the ex-president of the Birmingham Bar Association recommending that ythey call the Bar for a referral was dated January 10, 2001; yet, the Coughlins never called for a referral. Rather, the Coughlins spent the next 6 months filing a pertition for a writ of habeas corpus; a motion to compel discovery and a timely retrial; an amendment to the petition for a writ of habeas corpus; a motion to quash 12 subpoenas; a motion to compel; a motion for discovery. The Coughlins then appeared without complaint on the day of trial, June 4, 2001, nearly 6 months after being referred to the Birmingham Bar's referral service. The Coughlins never requested counsel and in fact, did not object when trial court instructed the jury that they would be representing themselves. (R.4.) Certianly two years from the date of arrest is a reasonable time to obtain counsel. The trial court did not err in allowing the trial to proceed. This claim is, therefore, without merit.

For the reasons stated above, the judgment of the trial court is hereby affirmed.

AFFIRMED.

McMillan, P.J., and Shaw and Wise, JJ., concur. Baschab dissents, with opinion.

BASCHAB, Judge (dissenting).

I must dissent. The record in this case does not indicate the the trial court ever advised the appelants about thge dangers and disadvantages of self-representation, as required by Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), and did not advise them that they had the right to withdraw any waiver of the right to counsel at any time during the proceedings, as required by Rule 6.1(b), Ala. R. Crim. P. Therefore, we should reverse the trial court's judgment and remand this case for new trial. See Farid v. State, 720 So.2d 998 (Ala. Crim. App. 1998); Hairgrove v. State, 680 So.2d 946 (Ala. Crim. App. 1995), cert. Denied, 680 So.2d 947 (Ala. 1996)

IN THE SUPREME COURT OF ALABAMA
May 17, 2002

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Ex parte Harry John Coughlin, Jr. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Harry John Coughlin, Jr. V. State of Alabama) (Jefferson Circuit Court: CC-00-447, 448; Criminal Appeals: CR-00-2114

CERTIFICATE OF JUDGEMENT
WRIT DENIED

The above cause having been duly summitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

Cost taxed to petitioner.

Writ Denied - No Opinion

HARWOOD, J.- Moore, C.J., and See, Brown, and Stuart, JJ., Concur